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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 LAMBERT GUTUTALA,

11 Plaintiff,

12 v.

13 PIERCE COUNTY, *et al.*,

14 Defendants.

CASE NO. C09-5568RBL

REPORT AND  
RECOMMENDATION TO  
DISMISS COMPLAINT  
WITHOUT PREJUDICE

Noted for January 15, 2010

15 This case has been referred to Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C.  
16 § 636(b)(1)(B). This matter comes before the court upon Plaintiff's request to withdraw his  
17 complaint (Doc. 10). After reviewing Plaintiff's motion, the undersigned recommends that the  
18 court GRANT the motion and dismiss this matter without prejudice pursuant to Rule 41(a).  
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20 Under Rule 41, a plaintiff has the right to voluntarily dismiss his case when no answer or  
21 motion for summary judgment has been filed by an adverse party. Rule 41(a)(1) specifically  
22 provides that dismissal as a matter of right can be foreclosed only by the filing of an answer or a  
23 motion for summary judgment. Roddy v. Dendy, 141 F.R.D. 261, 262 (S.D. Mississippi, 1992).  
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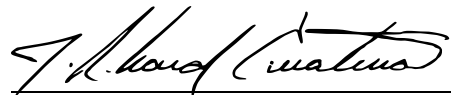
25 Plaintiff filed his complaint with the court on September 9, 2009. The matter was  
26 reviewed and the court issued an order explaining the complaint contained certain deficiencies.  
Plaintiff was directed to cure the deficiencies and/or show cause why the matter should not be

1 summarily dismissed. In response, Plaintiff has most recently filed the instant motion to  
2 voluntarily dismiss the case.

3       Significantly, the matter has not been served on the defendant, and thus, no answer or  
4 summary judgment motion has been filed by defendants. Plaintiff's request to withdraw his  
5 complaint without prejudice should be GRANTED.

6       Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil  
7 Procedure, the parties shall have fourteen (14) days from service of this Report to file written  
8 objections. *See also* Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those  
9 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the  
10 time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on  
11 January 15, 2010, as noted in the caption.  
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13       DATED this 23rd day of December, 2009.  
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17 J. Richard Creatura  
18 United States Magistrate Judge  
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